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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DAVID AND NATASHA WIT, et al.,  
  
Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH,  
  
Defendant.

GARY ALEXANDER, et al.,  
  
Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH,  
  
Defendant.

Case No. 3:14-CV-02346-JCS  
Related Case No. 3:14-CV-05337-JCS

**JOINT CASE MANAGEMENT  
STATEMENT**

Date: April 30, 2021  
Time: 2:00 p.m.  
Judge: Hon. Joseph C. Spero

Pursuant to Civil Local Rule 16-10(d) and the Court's February 1, 2021 Zoom Civil Minute Order (*Wit* ECF No. 530), Plaintiffs and Defendant, by and through their respective counsel, submit the following Joint Case Management Statement. The parties' last Joint Case Management Statement was filed March 22, 2019. (ECF No. 419.) As set forth in Local Rule 16-10(d), the parties are reporting progress or changes since that statement.

## **I. Intervening Proceedings and Status**

The parties submitted briefs on remedies on May 3, June 14, and July 10, 2019 (ECF Nos. 426, 429, 435), and supplemental briefs pursuant to the Court's order regarding further remedies briefing (ECF No. 450) on May 15, June 15, and July 2, 2020 (ECF Nos. 451, 452, 455, 459, 460). The Court issued Further Findings of Fact and Conclusions of Law on August 6, 2020 (ECF No. 469). The Court held a hearing on remedies on September 2, 2020, and on November 3, 2020 entered its Remedies Order (ECF No. 491) along with its order on UBH's decertification motion (ECF No. 490) and an amended summary judgment order (ECF No. 492). The Court appointed a Special Master on January 27, 2021 (ECF No. 528), and entered judgment on February 1, 2021 (ECF No. 531). The Class Administrator issued the corresponding class notices in January and February 2021. (*See* ECF No. 529 (Pls.' Notice Regarding Mailing and Publication of Notices of Partial Class Decertification).)

Plaintiffs filed their fee petition on November 24, 2020 (ECF No. 507); UBH responded on January 15, 2021 (ECF No. 523); Plaintiffs replied on February 16, 2021 (ECF No. 535); and with the permission of the Court, UBH filed a surreply brief on March 22, 2021 (ECF No. 549).

UBH appealed the injunction and final judgment; the appeals were consolidated by the Court of Appeals on February 12, 2021. On February 12, 2021, the Court of Appeals granted UBH's motion to stay the reprocessing remedy pending appeal. The parties' briefing on the appeal will be complete June 2, 2021. The Court of Appeals has indicated a likelihood of scheduling argument in August.

## **II. Guideline and Fiduciary Duty Training**

The Court's remedies order provided that the trainings of UBH personnel required under Sections IV.B.2.b & 2.c and IV.B.3.b and 3.c of the Remedies Order, regarding the third-party

1 clinical coverage guidelines and UBH's fiduciary duties, respectively, be completed within 90  
2 days following the Court's appointment of the Special Master. As set forth in the parties'  
3 Stipulation and [Proposed] Order Extending Deadline to Complete Training, (ECF No. 552),  
4 upon the Special Master's appointment, the parties met and conferred and made lengthy  
5 submissions to the Special Master addressing UBH's proposed training materials and setting forth  
6 the parties' respective positions on those materials.

7 On March 25, 2021, the parties informed the Special Master that in lieu of UBH  
8 conducting the training in-house, using UBH's proposed internal training materials, they had  
9 agreed that the Guideline Trainings would be conducted by the American Society of Addiction  
10 Medicine ("ASAM"), the American Association for Community Psychiatry ("AACP"), and the  
11 American Academy of Child & Adolescent Psychiatry ("AACAP"). Because the ASAM Criteria  
12 and LOCUS trainings will be conducted in part through live trainings, and because of the large  
13 number of individuals to be trained—approximately 1,245 in total—and limitations on ASAM's  
14 and AACP's capacity to conduct the live trainings, ASAM and AACP stated that they would need  
15 until August 31, 2021 (for ASAM) and September 30, 2021 (for AACP) to complete the trainings  
16 for all required personnel. Accordingly, the parties requested that the deadline for completing  
17 those trainings be extended to September 30, 2021, and on April 19, 2021, the Court issued an  
18 order approving that request (ECF No. 553).

19 The parties also have made substantial progress working toward a plan for conducting the  
20 fiduciary duty trainings under the Remedies Order. The parties have agreed that most of the  
21 approximately 1,335 personnel to receive fiduciary duty training will receive the training  
22 asynchronously. UBH submitted proposed content on March 4; Plaintiffs proposed revisions to  
23 the training content on March 23; UBH proposed further revisions on April 9; and Plaintiffs  
24 proposed further revisions on April 21. The Special Master will be deciding any remaining open  
25 issues regarding the content of that training. The parties have also agreed that UBH's peer  
26 reviewers and senior and executive management will receive live trainings, conducted jointly by  
27 Professor Colleen E. Medill of the University of Nebraska College of Law and Professor Donald  
28 T. Bogan of the College of Law of the University of Oklahoma. The parties disagree whether the

1 peer reviewers and senior and executive management will also need to complete the  
 2 asynchronous training, and are discussing that issue with the Special Master. In any event, the  
 3 parties are confident that the fiduciary duty trainings can also be completed well before  
 4 September 30, 2021, particularly because the vast majority of the individuals to be trained will do  
 5 so through an interactive asynchronous program, rather than through live trainings.

6 The parties and the Special Master have also discussed generally the going-forward  
 7 training protocol for new personnel who join UBH and recurring training for existing personnel.  
 8 They agree that the priority is implementation of training for the 1,300-plus current personnel to  
 9 be trained, and that the up-front training protocol will impact the going-forward training protocol.  
 10 For example, Plaintiffs have proposed that new personnel receive the same third-party guideline  
 11 trainings being implemented for current personnel, and assert that the third-party associations will  
 12 also be well positioned to conduct any recurring trainings for existing personnel. Plaintiffs and  
 13 UBH will meet and confer on this issue. In addition, the asynchronous fiduciary duty training,  
 14 once finalized, will be available to be completed by new peer reviewers and care advocates.

### 15 **III. Injunction Implementation**

16 In addition to oversight of the guideline and fiduciary trainings (described above) and  
 17 reprocessing (which has been stayed), the Court also appointed the Special Master to “oversee  
 18 and verify UBH’s compliance with [the Remedies] Order.” (ECF No. 491 (Remedies Order) at  
 19 98; *see also* ECF No. 528 (Appointment Order) at 8.) In submissions made to the Special Master  
 20 on March 4 and 23, 2021, Plaintiffs identified a number of areas in which they contend UBH has  
 21 not faithfully implemented the ASAM Criteria, LOCUS, CASII and ECSII, per Remedies Order §  
 22 IV.B.1 (ECF No. 491 at 96-98). UBH denies Plaintiffs’ assertions, and UBH submitted a  
 23 response to the Special Master on the subject on April 9, 2021, to which Plaintiffs are in the  
 24 process of preparing a further response. The parties will work with the Special Master to address  
 25 any outstanding disputes regarding UBH’s implementation of the ASAM Criteria, LOCUS,  
 26 CASII, and ECSII, and the Special Master has indicated that this may include a hearing in which  
 27 the clinical consultants assist the Special Master. (*See* ECF No. 546 (Order Granting Special  
 28 Master’s Application For Leave To Engage Psychiatric Consultants).)

Respectfully Submitted:

Dated: April 22, 2021

ZUCKERMAN SPAEDER LLP

/s/ Caroline E. Reynolds

Caroline E. Reynolds  
Adam Abelson

PSYCH-APPEAL, INC.  
Meiram Bendat

*Attorneys for Plaintiffs*

Dated: April 22, 2021

CROWELL & MORING LLP

/s/ Jennifer S. Romano

Jennifer S. Romano  
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Nathaniel P. Bualat  
Andrew Holmer

*Attorneys for Defendant United Behavioral Health*

#### ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I attest that concurrence in the filing of this document has been obtained from the other signatories.

Dated: April 22, 2021

/s/ Caroline E. Reynolds  
Caroline E. Reynolds